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Petitioners' Exhibit No. 10 (Photograph of the wrecked trains) 1b

Charts listing and analyzing reported cases in numerous federal courts involving enforcement proceedings under § 3 First (p) 3b–5b

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 494.

BROTHERHOOD OF RAILROAD TRAINMEN and A. W. DAVIS, *Petitioners*,

v.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, *Respondent*.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

OPINIONS OF COURTS BELOW AND DISSENTING OPINION IN AWARD OF THE NATIONAL RAILROAD ADJUSTMENT BOARD.

The opinion of the United States District Court for the Northern District of Alabama denying motions for summary judgments and providing for a jury trial of the issues is reported in 211 F. Supp. 308.

The opinion of the United States Court of Appeals for the Fifth Circuit is reported in 334 F. 2d 79.

The Award of the National Railroad Adjustment Board, together with the dissenting opinion, is reported in Vol. 147 of Awards of First Division, National Railroad Adjustment Board, Pages 665, *et seq.*, and is incorporated in the record herein (R. 31-38 and R. 38-65).

JURISDICTION OF THE COURT.

Jurisdiction of this Court to review the decision of the United States Court of Appeals for the Fifth Circuit is conferred by 28 U.S.C. § 1254(1) as set forth in the Petition for Writ of Certiorari.

COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW.

Is the District Court empowered, in a *de novo* proceeding, to set aside an award of the Adjustment Board which required that a railroad reinstate a discharged employee and pay him for time lost, and to enter judgment contrary to the findings and order of the Board, in an action for the enforcement of the order brought under the provisions of Section 3 First (p) of the Railway Labor Act (45 U.S.C. § 153 First (p))?

STATUTES INVOLVED.

The pertinent Federal Statutes involved are listed in the Petition for a Writ of Certiorari (p. 3) and set forth in its appendix (pp. A23-A26).

COUNTER-STATEMENT OF THE CASE.

The Respondent Louisville and Nashville Railroad Company (herein called L&N) does not accept the statement of the case which appears at pages 4-6 of Petitioners' brief, but sets forth below its own counter-statement.

This action arose as the result of the discharge by the L&N of Petitioner, Conductor A. W. Davis, on January 9,

1959 (R. 147). Petitioner was dismissed from service by the L&N following its formal investigation to determine the responsibility for a serious train accident involving a collision between two L&N freight trains near Peterman, Alabama, on December 11, 1958 (R. 571-666).

A dispute thereafter arose between the L&N and Mr. Davis, represented by Petitioner Brotherhood of Railroad Trainmen (herein sometimes called "BRT" or the "Union") over dismissal of Mr. Davis. The Union claimed that Mr. Davis had no responsibility for the collision and that he was entitled to reinstatement and to a recovery of back pay. The L&N denied the claim, whereupon the Union submitted the dispute to the National Railroad Adjustment Board (R. 23, 89, 106).

The members of the Adjustment Board could not agree, and a referee was assigned to break the deadlock (R. 23, 89, 106). On February 17, 1961, the Adjustment Board, with the referee sitting as a member, issued its Award 19862 (R. 31-69). The referee found Mr. Davis guilty of violating the carrier's Rule 103 in ordering and in commencing an extended northward back-up movement of almost one-half mile without stationing the rear-end brakeman or flagman on the front (north end) of the caboose (R. 34). He further found that the violation was substantial, not merely technical, since Mr. Davis testified that he knew that another train (No. 53) was southbound on the same track and was then due (R. 35). The referee indicated very clearly that L&N's decision to dismiss Mr. Davis was reasonably related to the seriousness of the proven offense and Mr. Davis' past discipline record (R. 36). However, since the L&N had imposed only a sixty-

day record suspension[1] upon Mr. W. B. Merritt, the engineer of Train No. 53, the referee, being of the opinion that Mr. Merritt's responsibility for the collision was "akin" to that of Mr. Davis', held that the L&N's action in dismissing Mr. Davis ". . . was discriminatory and in that sense arbitrary" (R. 38). The referee concluded (R. 38):

> ". . . The latter [Mr. Davis] shall be reinstated to carrier's service, with pay for all time lost and with all rights unimpaired; and carrier shall give him a record suspension of sixty days as of January 9, 1959."

On February 17, 1961, pursuant to the provisions of Section 3 First (o) of the Railway Labor Act (45 U.S.C. §153 First (o)), the Adjustment Board issued its order to the carrier to make the Award effective (R. 70). The L&N declined to place the award in effect because it considered the award to be arbitrary and capricious and also dangerous—dangerous considering the safety of its employees, the public and its property. The L&N further believed that the referee had no basis for attempting to equate the discipline imposed upon Mr. Davis with that given to Mr. Merritt. The L&N believed that the referee, not having heard the witnesses, acted arbitrarily in attempting to resolve conflicts in the evidence[2] and that this led to his

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[1] A "record suspension" on the L&N is an entry on the employee's discipline record and does not involve an actual suspension from work. A "sixty-day record suspension" is the highest discipline administered on the L&N short of actual discharge. Such record entries are used by L&N officials in assessing the extent of discipline that should be imposed in the event of future violations by the employee of the carrier's rules or instructions (R. 199).

[2] In the present award, the Board confessed (R. 37):

> "As previously stated, the record is full of conflicting testimony, especially that of No. 53's crew versus that of claimant. This Board has repeatedly said that it will not try to resolve such conflicts and that it will accept a carrier's evaluation and judgment if there is weighty evidence of record in support thereof."

erroneous conclusion that the responsibility of the two employees was "akin."

Further, even assuming that the two men were equally responsible for the collision, it is undisputed that when the members of the Adjustment Board and the referee were considering the claim of Mr. Davis, they had before them the past discipline record of Mr. Davis, which record was bad, but did not have the past discipline record of Mr. Merritt (R. 64, 107). The referee obviously recognized the fact that Mr. Davis' past record was not good (R. 36). Moreover, in the dissenting opinion, it is stated (R. 64):

> "Having thus gone contrary to a long line of previous holdings that it is not the duty or the function of this Division to weigh evidence, the referee then proceeds to another grave error. He takes it upon himself to decide that where two men are involved in an accident, they must both receive the same discipline, regardless of their previous service records. In this case the claimant's record reflects numerous rules violations, some of a grave and serious nature. Yet the referee decides the claimant must not be disciplined any more severely than the engineer of the other crew, regardless of the fact that insofar as the record reflects, the engineer had a clear record. Such findings are completely contrary to numerous awards to the effect that it is entirely proper to consider a man's past record in determining the amount of discipline to be assessed."[1]

Recognizing the seriousness of retaining in its employ a trainman who had, on this occasion[2] and in the past,

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[1] In the trial of this case in the District Court, the jury had before it the past discipline records of both Mr. Davis and Engineer Merritt (Respondent's Exhibits Nos. 2 and 3, R. 200, 203; Petitioners' Exhibit No. 13, R. 544-545).

[2] The seriousness of the collision is shown by Petitioner's Exhibit No. 10 (R. 172), which is reproduced in Respondent's Appendix, p. 1b. Except for the abandonment of their trains at the last moment, it could easily have killed or seriously injured four employes, including Petitioner Davis.

demonstrated an utter lack of regard for the carrier's operating rules and other rules, the L&N management declined to comply with the Adjustment Board order. Petitioners brought the present action for enforcement under the provisions of 45 U.S.C. § 3 First (p).

The L&N filed with the District Court certified copies of the record before the Adjustment Board and of Award 19862 and moved for summary judgment (R. 103-105). Petitioners also moved for summary judgment (R. 108-111). The Court denied both motions (R. 117).

The parties, at a pre-trial conference, agreed that the following was the only issue in controversy (R. 120-121):

> "Whether Davis was discharged without just cause would seem to depend upon whether he was discriminated against after considering all of the evidence relevant to the degree of fault on the part of both Davis and Merritt *as well as the previous record of each of them.*" (Emphasis added.)

Counsel for all parties also agreed (R. 121-123) that a jury should determine the issue as to whether Mr. Davis was discharged without just cause, and, if the jury determined that he was discharged without just cause, that the Court should then determine the amount of money due.

The case came on for trial before the Court, sitting with a jury, upon the issue agreed upon by the parties (R. 120-121, 125).

Under the instructions of the Court that the L&N had the burden of proving that there was just cause for the discharge of Mr. Davis (R. 563), the jury returned a verdict in favor of the L&N (R. 124). The jury having so decided the wrongful discharge issue concerning Mr. Davis' *entitle-*

ment to any relief, there was no issue remaining involving the *computation* of the amount of money due for submission to the Court.

The Judgment of the District Court entered pursuant to the verdict of the jury was affirmed on appeal. *Brotherhood of R. Trainmen, et al.* v. *Louisville & N. R. Co.*, 334 F. 2d 79. The petition to this Court followed.

ARGUMENT.

REASONS FOR DENYING THE WRIT.

The Petition for a Writ of Certiorari Should Be Denied Because the Court of Appeals Correctly Interpreted the Railway Labor Act.

The only basis relied upon by Petitioners in their complaint for the District Court's jurisdiction of this action was § 3 First (p) of the Railway Labor Act (45 U.S.C. § 153 First (p)). (R. 21). No reliance in plaintiffs' complaint was placed upon 28 U.S.C. § 1337 giving district courts jurisdiction of any civil action or proceeding arising under Acts of Congress regulating commerce. It was not until the Petition for a Writ of Certiorari that jurisdiction was claimed to have been conferred upon the District Court by that statute (p. 5).

Not only did Petitioners rely upon Section 3 First (p) of the Railway Labor Act as conferring jurisdiction upon the District Court; they predicated their right to the relief sought upon that section of the Act (R. 25, 27, 29).

Section 3, First (p) provides as follows:

> "If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District

Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."

Petitioners now ask this Court to hold that § 3 First (m) of the Railway Labor Act (45 U.S.C. § 153 First (m)) divested the Court of the power to review the non-money portion of the Adjustment Board's award (although conceding it has power to review the money portion of it) in the enforcement suit brought pursuant to § 3 First (p).

Sections 3 First (m) and (p) were made a part of the Railway Labor Act by the Amendment of that Act passed June 21, 1934. *We shall show that in the thirty years that these sections have been in effect, not one Court has held that it was prohibited by § 3 First (m) to hear de novo a suit to enforce an Adjustment Board award in an action*

instituted under § 3 First (p), but numerous Courts of the highest respectability have held the contrary. For the convenience of the Court we insert (Appendix, pp. 3b-5b) charts listing thirty-seven reported cases (all we have been able to find) in numerous federal courts involving enforcement proceedings brought under § 3 First (p) of the Act. The list includes all types of awards of the Adjustment Board, including reinstatement and back pay awards. In not a single one of these reported cases did the Court hold that it was without power to review all aspects of the Board's awards in a *de novo* proceeding.

In addition to those listed cases in which enforcement of awards was sought, there are other cases in which Adjustment Board awards were involved or in which they were discussed by the Court. The interpretation of the Railway Labor Act now urged by Petitioners has been rejected by every Court which has considered it. We discuss now some of the major cases involving this point.

IN THE THIRTY YEARS OF ENFORCEMENT PROCEEDINGS INSTITUTED UNDER THE PROVISIONS OF § 3 FIRST (p), THE LAW HAS BEEN WELL SETTLED THAT, WHEN THE ENFORCEMENT REMEDY IS INVOKED, ALL ASPECTS OF AN AWARD OF THE ADJUSTMENT BOARD ARE REVIEWABLE BY THE DISTRICT COURTS UNDER THE EXPRESS TERMS OF THAT SUBSECTION AND THAT COURTS ARE NOT POWERLESS TO ENTER A JUDGMENT IN SUCH PROCEEDINGS CONTRARY TO THE FINDINGS OF THE BOARD.

The law is well settled that § 3 First (m) does not divest the Court of the power to review non-money awards in an enforcement suit under § 3 First (p).

THE U. S. SUPREME COURT AND DISTRICT OF COLUMBIA CIRCUIT.

This Court affirmed the case of *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235 (1941). The opinion in that case was written for the Court of Appeals for the District of Columbia by then Judge Rutledge, who was soon to become a Justice of the Supreme Court and who was therefore unable to sit with that court when it affirmed the Circuit Court, 319 U. S. 732 (1943). The *non-money* award of the Adjustment Board involved a jurisdictional dispute between certain employees concerning the right to certain work. The Court held that a declaratory judgment would not lie and that the review of Adjustment Board awards provided by §3 First (p) was intended to be the exclusive method of review.

In answer to the carrier's contention that rejecting its declaratory judgment suit would deny protection of its rights guaranteed by the Constitution, the Court of Appeals said (pp. 244-245):

> "Much of the argument has been built around the alleged inadequacy of the administrative proceeding as complying with the requirements of due process, particularly in the absence of formal pleadings, opportunity for examining witnesses and cross examining them, opportunity for representation by counsel and for oral argument. These things would be important, if the Board's decisions were final in the legal sense and for purposes of enforcement, as to either facts or law. But, as has been shown, they have no such quality. Though the effects of an award favorable to an employee are substantial, they do not conclude the employer's rights. The Board cannot enforce its awards. That is left for the courts to do. It can be done only in a suit de novo. In the suit the cause of action is upon the award, to secure its enforcement.

But the parties are not limited by its provisions in the trial. The employee must set forth 'the causes for which he claims relief' and the Board's order, 45 U.S.C.A. § 153, First (p). The suit must 'proceed in all respects as other civil suits,' except that the order and findings 'shall be prima facie evidence of the facts therein stated.' Ibid. The carrier is limited in no way as to its defenses or the evidence it may wish to present. Its day in court in the enforcement suit is a full one. That is hardly disputed. The short answer, therefore, to the argument that the administrative proceeding is wanting in due process is that, if so, this is entirely immaterial. Any failure in this respect is cured by the full and complete opportunity which the carrier is given in the enforcement suit to make its defense under all procedural and substantive guaranties of the Constitution."

Among the cases referred to by the Court as supporting its opinion is *Cook* v. *Des Moines Union Ry.*, 16 F. Supp. 810 (S.D. Iowa, 1936). That case is noteworthy because it is the first reported case involving an Adjustment Board award, and up to the present time not one Court has disagreed with its findings.

The *Cook* case involved a non-money portion of the Award—a jurisdictional dispute. In connection with the issue that the carrier was deprived of its constitutional rights, the Court held (pp. 813-814):

"The statement in the act that the award shall be final and binding upon both parties to the dispute does not result in this case in depriving the Des Moines Union Railway Company of any constitutional rights or refuse to it the right of due process of law.

"It is unnecessary to determine whether or not this might be a depriving of due process in certain cases, but here certainly the Des Moines Union is not deprived of any constitutional rights. The purport of the act may be to provide that the award made by an

Adjustment Board shall be final so long as it is not attempted to be enforced. No provision is made in the act for the enforcement of any award or decision of the Adjustment Board, and therefore there is no deprivation by the railway company of any rights unless and until the suit is filed in the District Court of the United States for its enforcement. When this is done it becomes an action at law with the right of a jury. The entire case is open for trial as a law action on the original suit. The case here is one which has long been known to the law as a breach of contract and, whether the provision with reference to the action before the District Court of the United States is considered as a review or the enforcement of an award only, it affords to the carrier, especially in this case, every right which it would have had the action been originally brought in this court for breach of contract, other than the question of evidence as to the presumption of the findings of the board, and it has been held so often that the Legislature may provide for presumption in certain cases with reference to evidence that the citation of authorities is not necessary to show that such a provision is not a deprivation of the due process of law or an invasion of constitutional rights."

In *Switchmen's Union v. National Mediation Board*, 320 U. S. 297 (1943), the Court, in holding that Congress, by implication, had prohibited judicial review of the National Mediation Board's rulings under § 2 Ninth of the Railway Labor Act, was influenced by the fact that Congress in the Act had made express provision for judicial review of Adjustment Board Awards under § 3 First (p) and under § 9. The Court stated (p. 306):

"When Congress in § 3 and in § 9 provided for judicial review of two types of orders or awards and in § 2 of the same Act omitted any such provision as respects a third type, it drew a plain line of distinction. And the inference is strong from the history of the Act that that distinction was not inadvertent. The

language of the Act read in light of that history supports the view that Congress gave administrative action under § 2, Ninth a finality which it denied administrative action under the other sections of the Act."

SECOND CIRCUIT.

The case of *Hanks* v. *Delaware & H. R. Corp.*, 63 F. Supp. 161 (N.D. N.Y., 1945), was a suit under § 3 First (p) to enforce an Adjustment Board Award which required that a certain position be re-established and a payment of money made to the claimant. Relying upon the *Boswell* case, *supra*, the Court stated that the finding and order of the Board were "fairly comparable to expert testimony" (p. 164).

THIRD CIRCUIT.

One of the leading cases involving the enforcement of Adjustment Board Awards is *Dahlberg* v. *Pittsburgh & L. E. R. Co.*, 138 F. 2d 121 (C.A. 3, 1943). It involved an award relating to seniority rights—a non-money award. The Court commented on the legislative history that resulted in the 1934 amendments to the Act, stating (p. 123):

> "The reason for the choice of the words 'final and binding' will appear from the history of legislation providing for mediation of railway labor disputes. Under both the Act of May 20, 1926, 45 U.S.C.A. § 151 et seq. and the Transportation Act of 1920, 41 Stat. 456, as well as the system of labor mediation which was created during the first world war when the railroads were under federal control, the boards had advisory powers only. See Pennsylvania R. Co. v. United States Railroad Labor Board, 261 U.S. 72, 43 S. Ct. 278, 67 L. Ed. 536. Under the Act of 1926 their awards could be given some practical effect, but only by stipulation. These provisions were not entirely successful

and it is plain that the words in question adopted by the framers of the Act of 1934 make the decisions of the Board more efficacious than mere private advice. In this, however, there cannot be found an intention to invest them with the force of unappealable judicial decisions."

In rejecting the claim that the Court was without jurisdiction to review the award on its merits based upon the provisions of § 3 First (m) of the Act, the Court said (p. 122):

"In construing a statute, words may not be taken out of their context and endowed with an absolute quality nor may the plan of the entire statute be disregarded in interpreting any single provision. Obviously the expression 'final and binding' has its limitations. Even the appellants concede that the award is neither so final that it may not be set aside by the Court if the Board acted beyond its statutory authority nor so binding that the carrier can be compelled to obey it without the aid of the Court in enforcement proceedings. We think that the general plan of the statute clearly discloses an intention to use the words in the sense that the award is the definitive act of a mediative agency, binding until and unless it is set aside in the manner prescribed, and that it was intended that the Court should exercise broader powers than merely directing coercive process to issue if satisfied that the proceeding was authorized by law.

"The Act provides that the suit for enforcement shall 'proceed in all respects as other civil suits' except that the findings and award 'shall be prima facie evidence of the facts therein stated.' Section 3(p), 45 U.S.C.A. § 153(p). These procedural directions are particularly appropriate to a trial on the merits of disputed issues of both fact and law; less so to a mere examination of the scope of the Board's authority."

The Court also considered the constitutional issue and stated (p. 123):

"If the Act should be interpreted as precluding consideration of the merits by the Court, serious doubts as to its constitutionality would arise. Such interpretation would amount to vesting the Board with full judicial power; and, as was said in a similar but other connection in the dissenting opinion in Washington Terminal Co. v. Boswell, 75 U. S. App. D.C. 1, 124 F. 2d 235, 276, 'There can be no valid delegation of governmental power to nongovernmental agencies. Carter v. Carter Coal Co., 1936, 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160. The Adjustment Board, consisting of bi-partisan groups paid by and set up to represent the employees and carriers respectively, is not a governmental agency.'"

We also invite the Court's attention to the case of *Kirby* v. *Pennsylvania R. Co.*, 188 F. 2d 793 (C.A. 3, 1951), a case involving reinstatement and back pay. After discussing the operation of the Adjustment Board, the Court commented that the facts were not conclusively established by its findings.

FOURTH CIRCUIT.

The Fourth Circuit has also considered the enforcement of Adjustment Board awards under § 3 First (p) in the case of *Brotherhood, etc.* v. *Atlantic Coast Line R. Co.*, 253 F. 2d 753 (C.A. 4, 1958). The case involved reinstatement and back pay, and the Court held that the findings and order of the Board were not binding on it; that they were only *prima facie* evidence of the facts contained in them.

FIFTH CIRCUIT.

In the very recent case of *Jones* v. *Central of Georgia Railway Co.*, 331 F. 2d 649 (C.A. 5, 1964), the Court held (p. 654):

"The ultimate question involved is the meaning of the phrase 'final and binding' as used in subsection (m). Boswell, Dahlberg, Hodges, Brotherhood v. A.C.L., and numerous other cases herein cited, hold that it does not mean that non-money awards of the Board cannot be reviewed by the courts on a petition seeking enforcement."

Of like effect are the cases of *Estes* v. *Union Terminal Co.*, 89 F. 2d 768 (C.A. 5, 1937); *Ward* v. *New Orleans Public Belt Railroad Commission*, 97 F. Supp. 1002 (E.D. La., 1951), affirmed 195 F. 2d 829 (C.A. 5, 1952); and *Hodges* v. *Atlantic Coast Line Railroad Co.*, 310 F. 2d 438 (C.A. 5, 1962).

SIXTH CIRCUIT.

Judge Potter Stewart, now Mr. Justice Stewart of this Court, was a member of the panel that decided the case of *Brotherhood, etc.* v. *Railway Express Agency*, 238 F. 2d 181 (C.A. 6, 1956). Involved was an Adjustment Board award ordering the reinstatement of an employee and payment for his time lost. The District Court refused to enforce the Award. The Court of Appeals affirmed and held (p. 185):

"It is also urged that the District Court is not authorized to set aside the award of the Railroad Adjustment Board. The statute, 45 U.S.C. § 153 (p), 45 U.S.C.A. § 153(p), provides that, while the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, the district courts are empowered, 'under the rules of the court governing actions at law, * * * to enforce or set aside the order of the division of the Adjustment Board.' This is not a case where the District Court has invaded jurisdiction conferred on the Adjustment Board by the Railway Labor Act. Cf. Slocum v. Delaware, Lackawanna & Western Railroad Co., 339 U. S.

239, 70 S. Ct. 577, 94 L. Ed. 795. The Agency has been given, in compliance with the statute, the first opportunity to pass on the issues. Cf. Order of Railway Conductors of America v. Pitney, 326 U. S. 561, 66 S. Ct. 322, 90 L. Ed. 318. The case had full hearing, both before the Board and in the District Court, under the express statutory authority. We recognize that the Agency carries the burden of showing that the award of the Adjustment Board is wrong. Elgin, Joliet & Eastern Railway Co. v. Burley, 327 U. S. 661, 66 S. Ct. 721, 90 L. Ed. 928."

The Petitioners herein rely upon the *Slocum* and *Pitney* cases to bolster their contention that a Court is without power to set aside a non-money award of the Board. Both of these cases were considered in the case last cited.

Also, please see the case of *Thomas* v. *New York, Chicago & St. Louis R. Co.*, 185 F. 2d 614 (C.A. 6, 1950), affirming the District Court's refusal to enforce an Award of the Adjustment Board that ordered the reinstatement of an employee.

SEVENTH CIRCUIT.

The Court refused to enforce an Adjustment Board award involving the seniority standing of certain employees—a non-money award—in the case of *Railroad Yardmasters* v. *Indiana Harbor Belt R. Co.*, 166 F. 2d 326 (C.A. 7, 1948). It held that there would be no remedy to enforce an award had Congress not provided an enforcement remedy by § 3 First (p).

EIGHTH CIRCUIT.

The case of *Boos* v. *Railway Express Agency*, 153 F. Supp. 14 (D.S.D.; 1957), affirmed 253 F. 2d 897 (C.A. 8, 1958), was an action to enforce an Adjustment Board award

for restoration to an abolished position and compensation for salary lost. The Court refused to enforce. It was held that the trial in the District Court was a trial *de novo*.

NINTH CIRCUIT.

The recent case of *Callan* v. *Great Northern Railway Company*, 299 F. 2d 908 (C. A. 9, 1961), involved facts strikingly similar to the facts in the instant case.

Callan's discharge was the result of the collision of a train and a string of boxcars. He appealed to the Adjustment Board and that Board determined that the discipline was excessive. It ordered that he be reemployed and compensated for lost time less a 60-day suspension. Callan filed suit for enforcement of the Award and from an adverse jury verdict appealed.

The Court of Appeals affirmed the judgment of the District Court and, among other holdings, approved an instruction that had been given the jury. The instruction set out that by bringing an enforcement suit the petitioner laid before the Court the question of whether or not the award should be enforced; that the findings of the Board were *prima facie* evidence of the facts but that those findings were rebuttable by other evidence; that both sides had the right to introduce any material evidence available to them; and that the one disputing the correctness of the award had the burden of proving its incorrectness.

UNIFORMITY OF OPINIONS OF ALL COURTS.

Every Court that has considered the question has held that *all* awards of the National Railroad Adjustment Board are subject to judicial review. They have consistently exercised the power to set aside awards—money and non-

money awards—when the facts warranted such action. Not one Court has held it lacked that authority.

The appended charts list 37 cases which are all the cases we have been able to find that involved the enforcement of Adjustment Board Awards in any manner. We believe that the wisdom of Congress in providing for judicial review of Board awards is shown by the fact that in the 30 cases in which a Court ordered or denied enforcement, enforcement was ordered in only 7 and denied in 23.

THE SETTLED AND CONSISTENT INTERPRETATION OF THE RAILWAY LABOR ACT BY NUMEROUS FEDERAL COURTS HAS NOT BEEN OVERTURNED BY ACT OF CONGRESS NOR BEEN OVERRULED BY THE LANGUAGE APPEARING IN BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL. v. LOUISVILLE & N. R. CO., 373 U. S. 33.

If the Courts have mistaken the legislative intent in this statute, ample opportunity has been had by Congress to make its meaning clear. The contention of Petitioners that the decision of the Court of Appeals in the instant case conflicts with the decisions of this Court, or for that matter, the consistent opinions of every U. S. District Court or U. S. Court of Appeals that has considered the question is erroneous. To support their contention, Petitioners rely upon only one decision that directly involves the enforcement of an Adjustment Board award, namely, the case of *Brotherhood of Locomotive Engineers, et al.* v. *Louisville & N. R. Co.*, 373 U. S. 33. That decision neither conflicts with nor overrules the vast body of law holding that § 3 First (p) provides for a trial *de novo* for the enforcement of Adjustment Board awards and that § 3 First (m) does not divest Courts of power to hold such trials.

Petitioners' argument is premised almost entirely upon language which has been isolated by Petitioners from the

facts involved in that case and from the issue there before the Court. Petitioners especially rely upon its dissenting opinion. It must be remembered that, there, the non-money portion of the Adjustment Board award had been settled and disposed of and only the money part of it remained. The sole question before the Court was whether § 3 First (p) was the exclusive procedure for the enforcement of the money portion of the award or whether a strike could be called to enforce it.

We are not so presumptuous as to endeavor to tell this Court what it intended by its opinion in that case. We do believe it proper, however, to suggest that it did not hold that because of § 3 First (m) a court has no power to review a non-money award in a trial *de novo* as provided by § 3 First (p), which has no language restricting it to money awards. We ask the Court's indulgence in our here quoting from its opinion, language which we believe substantiates our reading of the opinion.

Speaking of Adjustment Board awards *generally*, it was said (pp. 37-38):

> ". . . And finally, subsections (o) and (p) describe the manner in which Adjustment Board awards may be enforced, providing for the issuance of an order by the Board itself and for judicial action to enforce such orders. The several decisions of this Court interpreting § 3 First have made it clear that this statutory grievance procedure is a *mandatory, exclusive and comprehensive* system for resolving grievance disputes. . . ." (Our Emphasis.)

This Court also said (p. 38):

> ". . . Similarly, an employee is barred from choosing another forum in which to litigate claims arising under the collective agreement. *Pennsylvania*

R. Co. v. *Day*, 360 U. S. 548, 552-553. A corollary of this view has been the principle that the process of decision through the Adjustment Board cannot be challenged collaterally by methods of review not provided for in the statute. . . . The decision in that case [*Union Pacific R. Co.* v. *Price*, 360 U. S. 601] was based upon the conclusion that, when invoked, the remedies provided for in § 3 First were intended by Congress to be the *complete and final means* for settling minor disputes. 360 U. S. at 616-617. See also, *Washington Terminal Co.* v. *Boswell*, 75 U. S. App. D.C. 1, 124 F. 2d 235 (per Rutledge, J.), aff'd. by an equally divided court, 319 U. S. 732." (Our Emphasis.)

To conclude that § 3 First (p), which makes no distinction between a money and non-money award, is confined to money awards and that it does not apply to the enforcement of other awards because the Court stated that it was the exclusive procedure for the enforcement of money awards is a manifest *non sequitur*.

We cannot believe that this Court desired to overrule a consistent and longstanding body of law—holding that § 3 First (m) does not deprive federal courts of the power to review, in a *de novo* trial, any award of the Adjustment Board in an enforcement suit provided for by § 3 First (p)—in a case wherein the precise question was not involved, and without so much as mentioning a single one of the numerous decisions which have so consistently followed the principle that non-money awards are also reviewable under the express statutory provisions of § 3 First (p). To the contrary, the Court cited *with approval* one of the early cases which helped bring this large body of law into existence, *viz.*: *Washington Terminal Company* v. *Boswell*, 124 F. 2d 235 (1941), affirmed 319 U. S. 732.

In the *Boswell* case, the carrier was precluded from maintaining a declaratory judgment action to declare a non-money award void because, the Court stated, the award could only be reviewed under § 3 First (p).

THE STATUTORY PROCEDURE OF SECTION 3 FIRST OF THE RAILWAY LABOR ACT FOR THE DETERMINATION OF DISPUTES INVOLVING THE INTERPRETATION OF COLLECTIVE BARGAINING AGREEMENTS IN THE RAILROAD INDUSTRY DIFFERS FROM THAT APPLICABLE TO ARBITRATION OF CONTRACT DISPUTES BETWEEN EMPLOYERS AND EMPLOYEES COVERED BY THE NATIONAL LABOR RELATIONS ACT AND THOSE OTHERWISE OUTSIDE THE COVERAGE OF SECTION 3 FIRST.

Relying on the so-called Steelworkers Trilogy,[1] Petitioners argue that the federal policy is one of final settlement of labor disputes by arbitration. We submit that reliance upon such cases is misplaced for the reason that § 3 First of the Railway Labor Act has no counterpart in the National Labor Relations Act, as amended (29 U.S.C. § 151, *et seq.*).

By the enactment of § 3 First, Congress has provided a detailed and comprehensive statutory grievance procedure. In summarizing so much of this statutory plan as relates to what happens after the entry of an Adjustment Board Award, the Court in *Brotherhood of Locomotive Engineers, et al.* v. *Louisville & N. R. Co.*, 373 U. S. 33, stated (p. 37):

"It further directs the Adjustment Board to entertain a petition for clarification of its award if a dis-

[1] *United Steelworkers of America* v. *American Manufacturing Company*, 363 U. S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960); *United Steelworkers of America* v. *Warrior and Gulf Navigation Company*, 363 U. S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960); *United Steelworkers of America* v. *Enterprise Wheel and Car Corporation*, 363 U. S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960).

pute should arise over its meaning. And finally, subsections (o) and (p) describe the manner in which Adjustment Board awards may be enforced, providing for the issuance of an order by the Board itself and for judicial action to enforce such orders."

The Court continued (pp. 38-39):

"In *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, the Court held that an employee could not resort to a common law action for wrongful discharge after the same claim had been rejected on the merits in a proceeding before the Adjustment Board. The decision in that case was based upon the conclusion that, when invoked, the remedies provided for in § 3 First were intended by Congress to be the complete and final means for settling minor disputes. 360 U. S. at 616-617. See also, *Washington Terminal Co.* v. *Boswell*, 75 U. S. App. D.C. 1, 124 F. 2d 235 (per Rutledge, J.), aff'd by an equally divided court, 319 U. S. 732."

It is clear that the statutory enforcement procedure is an integral part of the entire statutory process of § 3 First. In the *Boswell* case, the Court stated (p. 242):

"The entire statutory process has three distinct and primary stages: (1) direct negotiation between the disputants; (2) administrative determination; (3) judicial enforcement. While these are distinct, they are not independent. Each is related to the others as links in a chain or successive steps in a stairway leading to decision."

The Court continued (p. 246):

"In all this there is no essential unfairness. Certainly there is none beyond the power of Congress to create in the regulation of such complex economic matters. The carrier is at full liberty to accept and comply with the award, or to reject and disregard it.

> If it chooses the latter course, the award has no effect upon its rights unless the employee institutes and succeeds in a suit to enforce it. If he does so, the carrier receives full constitutional protection in the suit."

We submit that no proper analogy may be drawn between the statutory plan of § 3 First and enforcement of arbitration awards made pursuant to the terms of a private contract negotiated under the National Labor Relations Act, as amended. In *Trainmen* v. *Chicago R. & I. R. Co.*, 353 U. S. 30 (1957), the Court stated (pp. 31-32, note 2):

> "The relationship of labor and management in the railroad industry has developed on a pattern different from other industries. The fundamental premises and principles of the Railway Labor Act are not the same as those which form the basis of the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. § 151, et seq. It is one of those differences which underlies the controversy in this case."

Please see also *Sinclair Refining Co.* v. *Atkinson*, 370 U. S. 195 (1962).

Precisely the same argument advanced here by Petitioners was made in the case of *Brotherhood of Railway and Steamship Clerks* v. *Atlantic Coast Line Railroad Co.*, 253 F. 2d 753 (C.A. 4, 1958). In rejecting the argument, Judge Parker had this to say (pp. 757-758):

> "If it had been intended, as appellant argues, that the orders of the Board rendered pursuant to 45 U.S.C.A. § 153 should have the effect of awards of arbitrators, some such provisions as are contained in 45 U.S.C.A. §§ 158 and 159 which relate to arbitration under 45 U.S.C.A. § 157, would have been provided for their enforcement. The fact that an entirely different provision was made for the enforcement of Board orders under Section 153 from that made for enforcement of arbitration awards entered under the existing

statute relating to arbitration is a matter which cannot be ignored and which shows clearly that Congress did not intend Board orders to have the effect of arbitration awards."

THERE IS NO UNFAIRNESS IN THE ESTABLISHED PRINCIPLE THAT A DISCHARGED EMPLOYEE CANNOT MAINTAIN A COMMON LAW ACTION FOR DAMAGES AFTER RECEIVING AN ADVERSE AWARD FROM THE BOARD AND THE ESTABLISHED LAW THAT A COURT, UNDER SECTION 3 FIRST (p), HAS THE POWER TO REVIEW THE ENTIRE WRONGFUL DISCHARGE ISSUE AFTER AN AWARD FAVORABLE TO THE EMPLOYEE.

Petitioners assert unfairness in allowing a railroad to secure a court review of any award adverse to it but denying a review of an award in its favor.

This claim was pointedly answered by this Court in the case of *Union Pacific R. Co.* v. *Price*, 360 U. S. 601 (1959). In that case the Court held (pp. 615-616):

> ". . . The disparity in judicial review of Adjustment Board orders, if it can be said to be unfair at all, was explicity created by Congress, and it is for Congress to say whether it ought be removed."

This express invitation to Congress has not been accepted.

A discharged employee has the absolute right under the Railway Labor Act, subject only to state procedural requirements, to treat his employment relationship wholly at an end and to sue as for breach of any other contract, and there is nothing that the railroad can do which can detract from the employee's right to pursue to the end a judicial determination of his breach-of-contract suit. Clearly then, a discharged employee has the opportunity for the fullest day in court at the very outset. It is clear

that a discharged employee can have no just complaint if, at the end, the carrier has its opportunity for judicial review of arbitrary rulings of the Board.

PETITIONERS ADMIT THAT THERE PROPERLY ARE EXCEPTIONS TO THE FINALITY AND REVIEWABILITY OF NON-MONEY AWARDS.

Petitioners state (p. 15) that they do not contend that non-money awards are never reviewable. They say that an award should be set aside by a court when, for example, the award of the Board is arbitrary. The Board found (Appendix to Petition, p. A19; R. 34-35) that Mr. Davis violated the Company rule—not merely a technical violation—in making an unusual back-up movement of almost a half-mile without providing the required protection for his train or for that matter to prevent a collision with No. 53, which he knew was due and to his rear.

We earnestly submit that it was highly arbitrary to order the reinstatement of Petitioner, A. W. Davis. He was ordered reinstated not because he was not guilty of violating the company rules in a most serious respect—his violation was even held not technical—but because the discipline administered was more severe than that imposed upon the engineer of the train he collided with (Appendix to Petition, p. A22; R. 38). The Board endeavored to equate the discipline despite the fact that it had the service record of Davis, which was bad (R. 64), before it but not the service record of the engineer.

Surely it was arbitrary to order the reinstatement of a man whose complete disregard for the carrier's rules was a prime factor in causing a serious railroad wreck, especially so when his past record shows much disregard for company rules.

It was not the intent of Congress that a railroad could not protect itself from an employee who fails to comply with its rules but must keep him in its employ even though it is under a strict duty to provide a safe place to work and prevent injury to its employees, passengers and the public. A requirement that such a man be retained in the service is therefore arbitrary.

CONCLUSION.

The decision of the Court of Appeals is correct. No unsettled question of importance is presented and there is no conflict of decisions. Accordingly, a Writ of Certiorari should not issue.

Respectfully submitted,

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PETITIONER'S EXHIBIT No. 10

SUITS IN THE UNITED STATES COURTS TO ENFORCE NATIONAL RAILROAD ADJUSTMENT BOARD AWARD

	Style	District Court	Date	Court of Appeals	Date	N.R.A.B. Award Reviewed by Court and Enforced or Denied on Merits	N.R.A.B. Award Not Reviewed by Court Because of Being Final and Binding	Enforcement Ordered	Enforcement Denied	
Second Circuit	Hanks v. Delaware & H. R. Corp.	63 F. Supp. 161	1945			Yes		Yes		
" "	Crowley v. Delaware & H. R. Corp.	63 F. Supp. 164	1945			Yes			Yes	
" "	Joint Council Dining Car Employees v. Delaware, L. & W. R. Co.	Not Reported		157 F. 2d 417	1946					The only ques of limitations of Appeals h returned the
Third Circuit	Dahlberg v. Pittsburgh & L. E. R. Co.	Not Reported		138 F. 2d 121	1943	Yes			Yes	
" "	Kirby v. Pennsylvania R. Co.	92 F. Supp. 417	1952	188 F. 2d 793	1951					District Court enforce and it the cause of a The Court of trict Court to
" "	Brotherhood of Railway & Steamship Clerks v. Pennsylvania R. Co.	107 F. Supp. 924	1952							Motion to dis and placed on
" "	Powell v. Pennsylvania R. Co.	166 F. Supp. 448	1958							The suit was
Fourth Circuit	Virginian Ry. Co. v. System Federation No. 40, Etc.	Not Reported		131 F. 2d 840	1942	Yes		Yes		
" "	Atlantic Coast Line R. Co. v. Brotherhood of Ry. & S. S. Clerks, Etc.	Not Reported		210 F. 2d 812	1954	Yes			Yes	
" "	Brotherhood of Ry. Clerks, Etc. v. Atlantic Coast Line R. Co.	154 F. Supp. 71	1957	253 F. 2d 753	1958	Yes			Yes	
" "	Hanson v. Chesapeake & O. Ry. Co.	198 F. Supp. 325	1961							The District dismiss and of the award
Fifth Circuit	Estes v. Union Terminal Co.	Not Reported		89 F. 2d 768	1937					District Court the N.R.A.B. its hearings. ase for trial
" "	Smith v. Texas & N. O. R. Co.	32 F. Supp. 1013	1940			Yes			Yes	
" "	Thomas v. Texas & N. O. R. Co.	Not Reported		118 F. 2d 75	1941				Yes	
" "	System Federation No. 59, Etc. v. Louisiana & A. Ry Co.	30 F. Supp. 909 34 F. Supp. 89 Rehearing Denied	1940 1940	119 F. 2d 509	1941	Yes			Yes	Certiorari de L. Ed. 526.
" "	Railway Express Agency v. Order of Railroad Telegraphers	Not Reported		137 F. 2d 46	1943	Yes			Yes	
" "	Crist v. Public Belt R. R. Commission	93 F. Supp. 103	1950			Yes		Yes		
" "	Ward v. New Orleans Public Belt Railroad	97 F. Supp. 1002	1951	195 F. 2d 829	1952	Yes		Yes		

SUITS IN THE UNITED STATES COURTS TO ENFORCE NATIONAL RAILROAD ADJUSTMENT BOARD AWARDS.

Style	District Court	Date	Court of Appeals	Date	N.R.A.B. Award Reviewed by Court and Enforced or Denied on Merits	N.R.A.B. Award Not Reviewed by Court Because of Being Final and Binding	Enforcement Ordered	Enforcement Denied	Comment
ks v. Delaware & H. R. p.	63 F. Supp. 161	1945			Yes		Yes		
wley v. Delaware & H. R. p.	63 F. Supp. 164	1945			Yes			Yes	
t Council Dining Car ployees v. Delaware, W. R. Co.	Not Reported		157 F. 2d 417	1946					The only question presented was whether the statute of limitations barred the enforcement suit. Court of Appeals held that limitations had not run and returned the case for trial on the merits.
lberg v. Pittsburgh . E. R. Co.	Not Reported		138 F. 2d 121	1943	Yes			Yes	
by v. Pennsylvania R. Co.	92 F. Supp. 417	1952	188 F. 2d 793	1951					District Court held the award was too indefinite to enforce and it dismissed the complaint as not stating the cause of action on which relief could be granted. The Court of Appeals reversed and ordered the District Court to hear the case on the merits.
therhood of Railway & mship Clerks v. Pennsyl- a R. Co.	107 F. Supp. 924	1952							Motion to dismiss was denied by the District Court and placed on the calendar for trial on the merits.
ell v. Pennsylvania R. Co.	166 F. Supp. 448	1958							The suit was settled by stipulation.
ginian Ry. Co. v. System eration No. 40, Etc.	Not Reported		131 F. 2d 840	1942	Yes		Yes		
ntic Coast Line R. Co. v. therhood of Ry. & S. S. ks, Etc.	Not Reported		210 F. 2d 812	1954	Yes			Yes	
therhood of Ry. Clerks, v. Atlantic Coast Line o.	154 F. Supp. 71	1957	253 F. 2d 753	1958	Yes			Yes	
son v. Chesapeake & O. Co.	198 F. Supp. 325	1961							The District Court denied the railroad's motion to dismiss and the case was set for trial on the merits of the award.
s v. Union Terminal Co.	Not Reported		89 F. 2d 768	1937					District Court had dismissed the suit for failure of the N.R.A.B. to place certain employees on notice of its hearings. The Court of Appeals returned the case for trial on the merits of the award.
th v. Texas & N. O. R. Co.	32 F. Supp. 1013	1940			Yes			Yes	
mas v. Texas & N. O. R.	Not Reported		118 F. 2d 75	1941				Yes	
em Federation No. 59, v. Louisiana & A. Ry Co.	30 F. Supp. 909 34 F. Supp. 89 Rehearing Denied	1940 1940	119 F. 2d 509	1941	Yes			Yes	Certiorari denied 314 U. S. 656, 62 S. Ct. 108, 86 L. Ed. 526.
way Express Agency v. er of Railroad graphers	Not Reported		137 F. 2d 46	1943	Yes			Yes	
t v. Public Belt R. R. mission	93 F. Supp. 103	1950			Yes		Yes		
d v. New Orleans Public Railroad	97 F. Supp. 1002	1951	195 F. 2d 829	1952	Yes		Yes		

SUITS IN THE UNITED STATES COURTS TO ENFORCE NATIONAL RAILROAD ADJUSTMENT BOARD AWARDS (Continu

	Style	District Court	Date	Court of Appeals	Date	N.R.A.B. Award Reviewed by Court and Enforced or Denied on Merits	N.R.A.B. Award Not Reviewed by Court Because of Being Final and Binding	Enforcement Ordered	Enforcement Denied	
Fifth Circuit	Smith v. Louisville & N. R. Co.	112 F. Supp. 388	1953			Yes			Yes	
" "	Hodges v. Atlantic Coast Line Railroad Company			310 F. 2d 438	1962	Yes		Yes		
" "	Jones v. Central of Georgia Ry. Co.	220 F. Supp. 909	1963	331 F. 2d 649	1964	Yes			Yes	
" "	Alabama State Federation of Labor v. Kurn, et al.	46 F. Supp. 385	1942						Yes	Dismissed for reas trustee of bankru award which was a
Sixth Circuit	Brotherhood of Maintenance of Way Employees v. Nashville, C. & St. L. Ry. Co.	56 F. Supp. 559	1944			Yes			Yes	
" "	Odom v. Thompson	85 F. Supp. 477	1949			Yes		Yes		
" "	Thomas v. New York C. & St. L. R. Co.	Not Reported		185 F. 2d 614	1950	Yes			Yes	
" "	Brotherhood of Railway & S. Clerks v. Railway Express Agency	137 F. Supp. 653	1955	238 F. 2d 181	1956	Yes			Yes	
" "	Russ v. Southern Ry. Co.	218 F. Supp. 634	1963	334 F. 2d 224	1964	Yes			Yes	
Seventh Circuit	Order of Sleeping Car Conductors v. Pullman Co.	47 F. Supp. 599	1942							The District Court the award.
" "	Railroad Yardmasters of North America v. Indiana Harbor Belt R. Co.	70 F. Supp. 914	1947	166 F. 2d 326	1948				Yes	Court held the awa and indefinite to f ment suit.
" "	Knudsen v. Chicago & Northwestern Ry. Co.	106 F. Supp. 48	1952						Yes	Court held the awa definite and certain in favor of the pla
" "	Brotherhood of Sleeping Car Porters v. Pullman Co.	Not Reported		200 F. 2d 160	1952	Yes			Yes	The District Court Court of Appeals trict Court and ord
Eighth Circuit	Cook v. Des Moines Union Ry. Co.	16 F. Supp. 810	1936			Yes		Yes		
" "	Order of Railroad Telegraphers v. New Orleans, T. & M. Ry. Co.	135 F. Supp. 825	1954	229 F. 2d 59	1956				Yes	Court held award rendered without Certiorari denied S. Ct. 548.
" "	Boos v. Railway Express Agency	153 F. Supp. 14	1957	253 F. 2d 896	1958	Yes			Yes	
Ninth Circuit	Southern Pac. Co. v. Joint Council Dining Car Employees	Not Reported		165 F. 2d 26	1947	Yes			Yes	The District Court enforced. The C ment. Certiorari 1122, 68 S. Ct. 60
" "	Gunther v. San Diego & A. E. Ry. Co.	161 F. Supp. 295	1958			Yes			Yes	
" "	Callan v. Great Northern Ry. Co.	Not Reported		299 F. 2d 908	1961	Yes			Yes	

SUITS IN THE UNITED STATES COURTS TO ENFORCE NATIONAL RAILROAD ADJUSTMENT BOARD AWARDS (Continued).

Style	District Court	Date	Court of Appeals	Date	N.R.A.B. Award Reviewed by Court and Enforced or Denied on Merits	N.R.A.B. Award Not Reviewed by Court Because of Being Final and Binding	Enforcement Ordered	Enforcement Denied	Comment
ith v. Louisville & N. R. Co.	112 F. Supp. 388	1953			Yes			Yes	
dges v. Atlantic Coast Line ilroad Company			310 F. 2d 438	1962	Yes		Yes		
es v. Central of Georgia Co.	220 F. Supp. 909	1963	331 F. 2d 649	1964	Yes			Yes	
abama State Federation of bor v. Kurn, et al.	46 F. Supp. 385	1942						Yes	Dismissed for reason that suit was brought against trustee of bankrupt railroad for enforcement of award which was against the railroad corporation.
otherhood of Maintenance Way Employees v. Nashe, C. & St. L. Ry. Co.	56 F. Supp. 559	1944			Yes			Yes	
om v. Thompson	85 F. Supp. 477	1949			Yes		Yes		
omas v. New York C. & St. R. Co.	Not Reported		185 F. 2d 614	1950	Yes			Yes	
otherhood of Railway & Clerks v. Railway Express ency	137 F. Supp. 653	1955	238 F. 2d 181	1956	Yes			Yes	
s v. Southern Ry. Co.	218 F. Supp. 634	1963	334 F. 2d 224	1964	Yes			Yes	
der of Sleeping Car Conctors v. Pullman Co.	47 F. Supp. 599	1942							The District Court ordered a trial on the merits of the award.
ilroad Yardmasters of rth America v. Indiana rbor Belt R. Co.	70 F. Supp. 914	1947	166 F. 2d 326	1948				Yes	Court held the award and order were too uncertain and indefinite to furnish the basis for an enforcement suit.
udsen v. Chicago & Northstern Ry. Co.	106 F. Supp. 48	1952						Yes	Court held the award and order were not sufficiently definite and certain so as to make a prima facie case in favor of the plaintiff.
otherhood of Sleeping Car ters v. Pullman Co.	Not Reported		200 F. 2d 160	1952	Yes			Yes	The District Court ordered the award enforced. The Court of Appeals reversed the decision of the District Court and ordered enforcement to be denied.
k v. Des Moines Union Co.	16 F. Supp. 810	1936			Yes		Yes		
der of Railroad Telegrars v. New Orleans, T. & Ry. Co.	135 F. Supp. 825	1954	229 F. 2d 59	1956				Yes	Court held award void for reason that it had been rendered without notice to indispensible parties. Certiorari denied 350 U. S. 997, 100 L. Ed. 861, 76 S. Ct. 548.
s v. Railway Express ency	153 F. Supp. 14	1957	253 F. 2d 896	1958	Yes			Yes	
thern Pac. Co. v. Joint ncil Dining Car Emyees	Not Reported		165 F. 2d 26	1947	Yes			Yes	The District Court had ordered the N.R.A.B. award enforced. The Court of Appeals denied enforcement. Certiorari denied 333 U. S. 838, 92 L. Ed. 1122, 68 S. Ct. 608.
ther v. San Diego & E. Ry. Co.	161 F. Supp. 295	1958			Yes			Yes	
lan v. Great Northern Co.	Not Reported		299 F. 2d 908	1961	Yes			Yes	

CERTIFICATE OF SERVICE.

I, H. G. Breetz, one of the attorneys for Respondent, Louisville and Nashville Railroad Company, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 10th day of October, 1964, I served copies of the foregoing brief and appendix on the Petitioners by mailing copies, in duly addressed envelopes with first-class postage prepaid, to Mr. Al G. Rives, Mr. Clarence M. Small, Jr., and Rives, Peterson, Pettus & Conway, Seventeenth Floor, Twenty-One Twenty-One Building, Birmingham 3, Alabama, Attorneys for Petitioners.

H. G. BREETZ